HOUSE INSURANCE COMMITTEE
RESPONSE TO FORMAL REQUEST FOR INFORMATION

INTERIM CHARGE NO. 2-INSURETECH, BIG DATA, BLOCKCHAIN, INTERNET OF THINGS, ARTIFICIAL INTELLIGENCE
&
PRIVACY, ANTI-DISCRIMINATION, REBATE, AND LICENSING LAWS

SUBMITTED BY THE
ASSOCIATION OF FIRE AND CASUALTY COMPANIES OF TEXAS (AFACT)

WRITTEN COMMENTS:
BACKGROUND ON AFACT & TECHNOLOGY. AFACT is a trade association that provides advocacy and input on legislative and regulatory insurance issues important to the State of Texas. AFACT has been in business over 70 years and only operates in Texas. Some of AFACT members have been in existence and writing exclusively in Texas for over 100 years. The use of technology is an important reason why Texas companies have become more efficient in providing insurance products and services for the Texas property/casualty insurance market. Technology is largely unregulated in both insurance and the overall business markets. Innovation and new technology are changing rapidly and should not be diminished through unnecessary regulation.

AFACT would encourage the Committee to be thoughtful and careful on how it studies this broad charge. New laws or regulations relating to technology may discourage or slow-down future innovations. Because technology is not regulated, over regulation could put Texas insurers at a competitive disadvantage. Some AFACT members do business only in Texas. The regulation, if any, of technology as it applies to insurance should not be inconsistent with general standards applied in the United States or in other states.

In 2006, the Texas commissioner supported unprecedented legislation called "data mining" that would have given the regulator complete control over the use of technology if it impacted in all lines of insurance. (Property/Casualty; Life/Health; and Title). It was unprecedented because no other state sought to regulate technology in this manner. The bill contained a of data mining that was so broad and vague it would have encompassed all of the terms used in this charge (big data, blockchain and artificial intelligence). Fortunately, this legislation did not pass because there were no standards, other than the Commissioner's discretion, on how technology may be used in rating, underwriting, or claims handling. Potentially it could have effectively eliminated innovation and the use of technology by allowing the regulator to make decisions normally left to management. This would have stifled innovation and new technologies used by competing insurers to compete.

Many of the technologies used by insurers have resulted in increased efficiency and lower costs. These lower costs have resulted in a vibrant competitive insurance market where insurers are actively competing for business.

A few examples of the use of technology by insurers include programs used to estimate replacement values of homes; programs to provide estimates for material costs for repair of homes or vehicles; information in credit reports used to develop insurance scoring models; data used to

estimate salvage values of vehicles; data used to estimate labor costs for repair of homes or vehicles in specific territories and regions; programs and data bases used to develop classifications such as vehicle groupings, territory groupings, or information to classify building construction types and home; data from NAIC financial reports showing aggregated premium and loss data by line of business that can be used in ratemaking and underwriting; data and indices such as consumer price indexes and other similar indexes.

Insurers currently may use advanced analytics to create operational efficiencies in claims and underwriting such as data bases used to estimate replacement cost values. Evolving technology also may assist in the development of smart devices that can be used to prevent losses such as theft, fire, or water losses.

Big Data. This interim charge is very broad term and encompasses a large number of technology concepts. Generally, the term big data is used to describe a process where technology is used to find ways to analyze, systematically extract information from, or otherwise deal with data sets that are too large or complex to be dealt with by traditional data-processing application software. Most insurers and regulators have been using types of big data for decades.

The Committee should provide more clarity through examples or definitions on what is intended to be accomplished on this charge.

Blockchain. Again, some definitions should be applied on what is being sought here. Blockchain is a type of technology associated in the past with ledger accounts through Bitcoin or transactions in Amazon. Most AFACT members market their products through captive or independent agents and do not sell through internet sales that might involve the same type of block chain technology as commonly discussed in business technology articles.[1] However, if the words "block" and "chain" are actually talking about digital information (the "block") stored in a public database (the "chain"), then this is a matter where AFACT members have maintained privacy and security requirements for personal information since the passage of federal and state privacy laws.[2]
If Blockchain is meant to review or address the storage and security of data through a block, then AFACT would urge the committee to review this in the context of data security and cyber risks, Most AFACT members have procedures in place to protect information obtained from consumers as well as confidential trade secret information it develops on its business.

The NAIC has ongoing tasks force and working groups that are reviewing the need for laws specific to insurance especially on data security. The NAIC has a model data security law requiring licensees under the insurance code to report and maintain certain data security requirements as it relates to potential data breaches. Industry groups have participated in the hurried development of this model and numerous amendments have been made to the model law in states that have reviewed and considered the data security issue. AFACT members are currently reviewing drafts of this language and comparing this new law to current requirements on reporting of data breaches to the AG.

[1] See, https://www.investopedia.com/terms/b/blockchain.asp
[2] See, Chapter 601, Insurance Code and the Gramm-Leach
Blilely Act, 15 U.S.C. §6801 et. seq.

Artificial Intelligence (AI). Again, this is a very broad and vague charge because the term artificial intelligence is not defined and is broadly defined in various articles. For example, one article said "Artificial Intelligence (AI) is a rapidly advancing technology, made possible by the Internet, that may soon have significant impacts on our everyday lives. AI traditionally refers to an artificial creation of human-like intelligence that can learn, reason, plan, perceive, or process natural language[1]examples of artificial intelligence included[3]:

- Email filtering: Email services use artificial intelligence to filter incoming emails. Users can train their spam filters by marking emails as "spam".
- Personalization: Online services use artificial intelligence to personalize your experience. Services, like Amazon or Netflix, "learn" from your previous purchases and the purchases of other users in order to recommend relevant content for you.
- Fraud detection: Banks use artificial intelligence to determine if there is strange activity on your account. Unexpected activity, such as foreign transactions, could be flagged by the algorithm.
- Speech recognition: Applications use artificial intelligence to optimize speech recognition functions. Examples include intelligent personal assistants, e.g. Amazon's "Alexa" or Apple's "Siri".

If AI is intended to regulate how insurer, obtain information from the internet, this could have profound impacts on rating, underwriting, and claims. Regulators often use information from AI to determine if personas are engaged in unauthorized insurance or fraudulent acts or practices.

CONCLUSIONS AND DISCUSSION OF CURRENT LAWS ON PRIVACY, ANTI-DISCRIMINATION, REBATE AND LICENSING.

As stated earlier, current laws on privacy for insurers has been in place for several years under federal and state law. These laws are designed to recognize that some information is vital and necessary to be shared with reinsurers. The privacy laws also protect personal identifiable information of policyholders and applicants for insurance. Even with rapidly expanded use of new technology, the existing privacy laws have functioned well for consumers and insurers.

Anti-Discrimination laws in Chapter 544 of the Insurance Code including Texas laws that prohibit the use of race, religion, or national origin in underwriting and rating have been in place for many years and have not been ignored by insurers and the use of technology. AFACT has supported these laws since they were enacted in 1995 and have not used technologies that would violate these laws.

More and better use of technology by regulators to streamline the licensing of both insurers and agents should be considered. While the Department has shown considerable improvement in the time it takes to process applications, the Committee may want to take a closer look at whether the underlying statutes should be amended to make it even faster. This is particularly important after

[3] https://www.internetsociety.org/resources/doc/2017/artificial-intelligence-and-machine-learning-policy-paper/?gclid=EAIaIQobChMIqL7SxOTZ6wIVzMDACh21eAlVEAAYAiAAEgIUVfD_BwE

catastrophic events where insurers are required to bring in adjusters and have them licensed to adjust losses.

Texas rebating laws have been in place for nearly 100 years and these laws are now codified in Chapter 1801 of the Insurance Code for property/casualty business. There have been recent examples where new internet businesses have started promising things like "free software" and other inducements to buy insurance. Regulators have eventually addressed these inducements or promises under state rebating laws. This area is a good example though of where regulation responds much slower than technology. AFACT members supported changes to Texas rebate laws that permitted giving promotion items of nominal value, $25 or less. It may be time to review those laws again.

AFACT would urge the Committee to review the NAIC Model Data Security law as it pertains to the ability of regulators to assure licensees have adequate means to prevent cyber risks.
:
For questions or additional information, please contact:

Jay Thompson
Counsel for AFACT
701 Brazos, Suite 1500
Austin, Texas 78701
Phone: 512-415-8191
Email: jthompson@thompsoncoe.com